

than felonies and a better definition is being worked on right now by the Commission for the study of revision of our criminal law.

THE CHAIRMAN: Any other questions of the sponsor?

Delegate Marion.

DELEGATE MARION: Delegate Henderson, I wonder if you could tell us how many other states have had experience in criminal cases with juries of no less than six and how many states there are and what their experience has been.

THE CHAIRMAN: Delegate Henderson.

DELEGATE HENDERSON: I have a lengthy memorandum which has been prepared by the research staff here. I have not personally done any research. I read here that twenty-six state constitutions provide for jury verdicts other than unanimous decisions. Only six state constitutions provide for less than unanimity in criminal cases less than felonies.

Your question was as to less than twelve?

THE CHAIRMAN: Delegate Marion asked you as to states with a jury of six.

DELEGATE HENDERSON: Those states that are given here are: Iowa, Nebraska, Arizona, Missouri, South Dakota and Washington.

THE CHAIRMAN: Any further questions of the sponsor?

Delegate Scanlan.

DELEGATE SCANLAN: Judge Henderson, my question is directed to the less than unanimous verdict aspect of your proposal.

Is my understanding correct that the mother country, England, which originally had the unanimous verdict requirement in criminal cases, has retreated from that and now permits less than unanimous verdict in criminal cases and one of the reasons assigned for the change on this matter is the large increase in jury tampering that has grown up in recent years?

THE CHAIRMAN: Delegate Henderson.

DELEGATE HENDERSON: I believe that is true. They have changed their practice in that respect.

THE CHAIRMAN: Delegate Churchill Murray, do you have a question?

DELEGATE E. C. MURRAY: Delegate Scanlan asked my question.

THE CHAIRMAN: Delegate Chabot, do you have a question?

DELEGATE CHABOT: Yes, sir.

Delegate Henderson, could you indicate how many of the states go as far as this amendment would in permitting a less than unanimous jury in a major criminal case, whether it is called a felony or whatever the most serious punishment would be?

THE CHAIRMAN: Delegate Henderson.

DELEGATE HENDERSON: I think there are only one or two cases which go all the way. That is, the statute usually provides for less than unanimity in non-felonious cases. But that, I believe, is not by express constitutional provision, but by action of the legislature which has simply applied the rule only to small juries in the inferior courts, though not in the courts of higher jurisdiction. That seems to be the pattern. I believe there are only one or two that apply it all the way along the line.

THE CHAIRMAN: Delegate Henderson's time has expired.

The Chair recognizes Delegate Kiefer.

DELEGATE KIEFER: Mr. Chairman, ladies and gentlemen, I must rise to oppose this amendment.

It is with reluctance that I go against such a distinguished gentleman as Judge Henderson. Nevertheless, the Committee considered this at great length, and had a considerable number of witnesses before it.

The only witness who appeared before this Committee who was as I recall off-hand, in favor of this provision was Judge Henderson himself. We had Chief Judge Foster of the Supreme Bench of Baltimore City, we had representatives from the Bar Association of Baltimore City, Maryland State Bar Association, and we had other judges, and individuals, all of whom were unanimous in their opinion that the verdict in a criminal case should be unanimous, and that, generally speaking, there should be not less than 12 jurors.

Now, I well recognize that some states permit less than unanimous verdicts, but I cannot categorize them any more than Judge Henderson can. We went into this thing very carefully. There are a number of jurisdictions which make a provision for a less than unanimous verdict or less than twelve judges, or jurors, but they do this by spelling out only in minor cases and only under certain circumstances, and there is only maybe one that will permit a less